IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.15761 of 2002

Between:

Smt. Asmath Ara Begum, W/o Late Khaja Asad Ali Johar,
R/o 4-7-86, Islamia Steet, Nizamabad.

...PETITIONER

AND

1. The Under-Secretary to the Government of India, Ministry of Home Affairs, LokNayak Bhavan, Khan Market, New Delhi – 110003.
2. The Principal Secretary to Government, Government of Andhra Pradesh, Revenue Department, Secretariat, Hyderabad.
3. The District Collector, Nizamabad.

...
RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of a Writ of Mandamus declaring the proceedings No.112/439/82-FF(HC) dt:08.11.2001 of the 1st Respondent as illegal arbitrary and thereby violative of Articles 14 of the Constitution of India apart from it being contrary to the Swatantrata Sainik Samman Pension Scheme, 1980 and set aside the same and consequently direct the Respondents to consider the case of the petitioner for granting of Freedom Fighters pension under Swatantrata Sainik Samman Pension Scheme, 1980 as a widow of Late Khaja Asad Ali Johar Freedom Fighter who died on 7.8.1984 along with arrear and interest thereon from the date of Application i.e. 31-05-1988 filed by the Petitioner's husband.

Counsel for the Petitioner: MR.Y.S.VENKAT RAO

Counsel for the Respondent No.1: MR.RAMAKRISHNA RAO SIDDANATHI (ADDL.SC FOR CG)

Counsel for the Respondent Nos.2 & 3: G.P. for Revenue

The Court made the following:

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.15761 OF 2002

ORDER:

The petitioner seeks a Writ of Mandamus declaring the order of the first respondent dated 08.11.2001 as illegal, arbitrary and violative of Article 14 of the Constitution of India and also contrary to Swatantrata Sainik Samman Pension Scheme, 1980 (hereafter called 'the Pension Scheme). She further seeks a consequential direction to the respondents to consider the case of the petitioner for granting Freedom Fighters Pension under the Pension Scheme as widow of late Khaja Asad Ali Johar.

The case of the petitioner in brief is as follows. The petitioner claims that her husband late Khaja Asad Ali Johar, a freedom fighter, was imprisoned in the Central Prison, Hyderabad and the District Jail, Nizamabad and he fought in favour of Indian Union against Nizam's Government, as a result of which he was under detention from 09.02.1357 Fasli to 12.02.1357 Fasli. Later, it is alleged, he was admitted as Detenu No.399 in the District Jail, Nizamabad under Section 119 of the Preventive Detention Act, 1950 as per the order of the Superintendent of Police, Nizamabad from 28.12.1357 Fasli to 10.11.1358 Fasli. During his life time, Khaja Asad Ali Johar made an application on 04.04.1981 to the Collector requesting for supply of an attested copy of warrant No.7. The Collector appears to have addressed a letter dated 18.04.1981 stating that there was no record available in the office regarding warrant. However, the petitioner's husband procured a certificate from the Superintendent, District Jail, Nizamabad and applied to the Revenue Divisional Officer. Be that as it is, it is alleged that after making proper enquiry, the third respondent recommended the case of Khaja Asad Ali Johar for grant of pension by letter, dated 03.03.1990.

When the matter was under consideration, the petitioner's husband died and thereafter the petitioner pursued the matter. When

the Central Government did not pass any orders, the petitioner filed Writ Petition being W.P.No.12352 of 1998 before this Court. The same was disposed of by this Court by order, dated 28.09.1999 directing the first respondent to consider the case of the petitioner basing on the recommendations made by the Screening Committee and pass appropriate orders. The first respondent by order, dated 21.12.1999 rejected the claim of the petitioner. Not satisfied with the same, the petitioner again sent a representation to the first respondent, who, after reconsidering the case of the petitioner, sent a communication, dated 08.11.2001 rejecting the request for grant of Freedom Fighters Pension, assailing which, the present Writ Petition is filed.

Though the Writ Petition was admitted on 20.09.2002 and the first respondent was directed to file counter-affidavit, no counter-affidavit was filed. However, learned Additional Central Government Standing Counsel Sri Rama Rao Siddanthi made elaborate submissions based on the record filed by the petitioner.

Learned counsel for the petitioner, Sri Y.S.Venkat Rao submits that after considering the representation of the petitioner, the District Collector by letter, dated 13.06.2000 recommended to the State Government for sanctioning pension to the petitioner, that the State Government by letter dated 19.07.2001 forwarded the report of the Collector to the Deputy Secretary to the Government of India in the Ministry of Home Affairs with a request to reconsider the case of the petitioner, but the same was not considered properly by the first respondent. He would also submit that the petitioner's husband suffered more than six months imprisonment and therefore, he is eligible for Freedom Fighters Pension. **Per contra** the learned Additional Central Government Standing Counsel submits that the petitioner's husband did not suffer six months imprisonment during freedom struggle and therefore, he is not eligible for any Freedom Fighters Pension and that the period of suffering mentioned in the letter of the Collector is not supported by acceptable evidence and therefore, the first respondent was justified in coming to conclusion that the petitioner's husband is not eligible for Freedom Fighters Pension.

The only point that would arise for consideration is whether the petitioner's husband suffered imprisonment for at least six months, so as to become eligible for Freedom Fighters Pension under the Pension Scheme? Learned counsel for the petitioner as well as learned counsel for respondent No.1 placed reliance on the certificate,

dated 15.04.1998 issued by the Superintendent, District Jail, Nizamabad and the letter bearing No.B4/5429/98 dated 13.06.2000 addressed by the District Collector to the Secretary to the Government of A.P., Revenue Department. It is therefore necessary to consider these documents to resolve the controversy.

The certificate, dated 15.04.1988 issued by the office of the Superintendent, District Jail, Nizamabad reads as under.

> This is to certify that the Detenue No.399, Sri Khaja Asad Ali Johar, S/o.Ahmed Ali was admitted in District Jail, Nizamabad on 28.12.1357 Fasli under preventive detention under Section 119, Tahfuz, till further instructions by the Superintendent of Police, Nizamabad and released on 10.11.1358 Fasli vide letter Civil Administrator, Nizamabad No.207, dated 07.08.1948.
>
> The above particulars are furnished hereby by the District Level Committee Meeting, Nizamabad, State Andhra Pradesh held on 12.04.1988.

As can be seen from the above, the certificate was not issued based on any jail records but it was issued based on the letter of the Civil Administrator, Nizamabad, dated 07.08.1948. For the purpose of the Pension Scheme, it is not denied the requirement is the actual suffering in the jail for a period of six months and mere order of detention for six months is not sufficient. Further, even according to the said certificate, the particulars were furnished to the office of the Superintendent, District Jail by the District Level Committee and there was no record whatsoever kept in the jail to evidence the jail suffering by Khaja Asad Ali Johar.

In the letter of the District Collector, dated 13.06.2000, a reference was made to a certificate issued by the Inspector General of Prisons & Director of Correctional Services and the Collector states that no dates are communicated in the Trial Register. Further, it also makes reference to the certificate issued by the Superintendent, District Jail, dated 15.04.1988 above referred to. The certificate issued by the Inspector General of Prisons, dated 02.04.1981 reads as under.

OFFICE OF THE INSPECTOR GENERAL OF
PRISONS & DIRECTOR OF CORRECTIONAL
SERVICES: ANDHRA PRADESH:
HYDERABAD DATED 02.04.1981

No.Rc.594/S6/80-5.

TO WHOM IT MAY CONCERN

The following is the true translation of the entries in the Registers of the central Prison, Hyderabad: Sri Khaja Asad Ali Johar, S/o.Khaja Ahmed Ali "B" Class R/o.Nizamabad was admitted in the Central Prison, Hyderabad on 9-2-1357 F under Section 119 Tahaffuz letter No.7/PA/56 F dated 9-2-1357 F of Khufiya Police Azala Sarkare Alle. He was released on parole on 12-2-1357 for one week. There is another entry of conditional release in Col.25 of Undertrial Register, but no date is indicated.

INSPECTOR GENERAL OF PRISONS AND
DIRECTOR OF CORRECTIONAL SERVICES:

To:
Sri Khaja Asad Ali Johar,
Managing Editor,
"Hamara Hindustan" Weekly,
Nizamabad.

As per the certificate issued by the Inspector General of Prisons, the petitioner's husband underwent imprisonment for a period of four days, whereas as per the certificate issued by the Superintendent of District Jail, Nizamabad, he underwent imprisonment for about ten months. But both these certificates cannot be relied on because the certificates themselves mention that they were not issued based on the information furnished by somebody and that there are no relevant entries in the registers.

As noticed earlier, the application made by the petitioner was considered pursuant to the directions of this Court in W.P.No.12352 of 1998 and was rejected by a letter, dated 21.12.1999. It makes a reference to the eligibility conditions *inter alia* that a person, who had suffered minimum imprisonment of six months on account of participation in freedom struggle, is eligible under the Pension Scheme. For proving that a person has undergone imprisonment, the following evidence is to be produced.

(a) Imprisonment/detention certificate from the concerned Jail authority, District Magistrate, or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release, OR

(b) In case records of the relevant period are not available, a Non-availability of Record certificate (NARC) from the concerned State/Union Territory Administration along with 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum one year and who were with the applicant in the Jail. In case the certifier happens to be a sitting or Ex-MP/MLA, only one certificate in place of two is required. The NARC should not be general or vague and should conform to the instructions issued under the Scheme.

Tested in the light of those conditions, the two certificates

referred to herein above which are based on the report sent by the Collector are not sufficient to prove that the petitioner's husband underwent imprisonment for six months. At the first instance, after considering the report sent by the Government as well as the certificates, the first respondent rejected the claim. By impugned order, the petitioner was informed that the issue was reconsidered in view of the representation made by the petitioner and as the petitioner did not furnish any fresh documentary evidence, the claim was rejected.

Learned counsel for the petitioner has produced before this Court the two certificates issued by the Inspector General of Prisons and the Superintendent of District Jail, as well as the letter of the District Collector, dated 13.06.2000, which was forwarded by the Government of A.P., to the Central Government vide letter dated 19.07.2001. As the matter was already considered by the Government of India twice, instead of again remanding the matter to the Central Government, this Court has considered the material placed before this Court and is convinced that the first respondent has given due consideration to the evidence produced by the petitioner and has come to a correct conclusion that the petitioner's husband does not satisfy the eligibility criteria under the Pension Scheme, 1980. I find no irregularity or illegality in the impugned order.

The Writ Petition is devoid of merit and is accordingly dismissed.

(V.V.S.RAO, J)

22nd September 2004
RRB

Copy to:

1. The Under-Secretary to the Government of India, Ministry of Home Affairs, LokNayak Bhavan, Khan Market, New Delhi – 110003.
2. The Principal Secretary to Government, Government of Andhra

Pradesh, Revenue Department, Secretariat, Hyderabad.

3. The District Collector, Nizamabad.
4. Two CCs to G.P. for Revenue, High Court Buildings, Hyderabad (OUT).
5. Two CD copies.